**THE HONOURABLE SRI JUSTICE A. GOPAL REDDY**

**WRIT PETITION NO. 17362 OF 2004**

**ORDER:-**

This writ petition is filed under Article 226 of the Constitution of India questioning the action of first respondent in invoking retention money Bank guarantee furnished by the petitioner in favour of it in regard to the contract package as illegal and arbitrary and further direct first respondent not to encash the said two bank guarantees.

Case of the petitioner is that third respondent was entrusted with the work covered by the contract package No. NS-23/AP worth Rs.74,88,79,544-69. Out of the said work, third respondent entrusted a part of the work to the petitioner, the amount covered by such entrustment is of Rs. 34.60 crores. At the request of third respondent, petitioner secured two bank guarantees covering an amount of Rs. 1.35 crores and Rs. 50 lacks from second respondent herein. On completion of entire work, half of the total amount retained is repaid to the Contractor and the other half is retained till defect period expires. Therefore, appropriation from retention money can take place only at the end of the defect liability period since the said amount is furnished as a guarantee for due discharge of omissions and commissions even during the defect liability period. Time fixed under the contract for completion of the subject work was due to expire in November, 2003 and the petitioner has almost completed the work in entirety and third respondent is continuing to execute the balance works. Since the work could not be completed by November, 2003, third respondent asked for extension of time till June, 2005, on which the decision of first respondent is awaited. Cause of action for appropriation from out of retention money has not arisen for first respondent and therefore, question of invoking the Bank guarantee furnished by the petitioner, at this stage, does not arise. If the proceeds covered by Bank guarantee are allowed to be appropriated by first respondent, it would cause manifest injustice to the petitioner. First respondent in collusion with third respondent, with a view to commit fraud on the petitioner, without invoking

guarantees furnished by third respondent, resorted to invoke the bank guarantees furnished by the petitioner. Therefore, the contemplated action of first respondent in invoking the subject bank guarantees is nothing but illegal, high handed and arbitrary. Hence, this writ petition.

Learned counsel for first respondent submitted that the on invocation of the bank guarantees made by the petitioner, the amount due under the same has already been realized by first respondent.

In view of the above, the proper remedy available for the petitioner is to approach the civil Court and raise all the grounds, including the invocation of bank guarantees by first respondent is contrary to the terms and conditions of the contract entered into between the parties and can claim damages for such illegal invocation of bank guarantees.

Accordingly, the writ petition is dismissed with liberty to the petitioner to avail the remedies as are open to it under law.